

# EXHIBIT C



Page 2

1 A P P E A R A N C E S:

2 (All appearances via Veritext Virtual)

3

4 BAKER & HOSTETLER LLP

5 Attorneys for Plaintiffs

6 Key Tower

7 127 Public Square, Suite 2000

8 Cleveland, Ohio 44114

9 BY: DEBORAH WILCOX, ESQ.

10 - and -

11 LISA BOLLINGER GEHMAN, ESQ.

12 PHONE: 216.621.0200

13 EMAIL: dwilcox@bakerlaw.com

14

15

16 LEX LUMINA PLLC

17 Attorneys for Defendant

18 745 Fifth Avenue, Suite 500

19 New York, New York 10151

20 BY: RHETT O. MILLSAPS II, ESQ.

21 - AND -

22 CHRISTOPHER J. SPRIGMAN, ESQ.

23 PHONE: 646.898.2055

24 EMAIL: rhett@lex-lumina.com

25

1 identified any goods put out by the plaintiff,  
2 all they've done is playback the name Hermes and  
3 the name MetaBirkins.

4 Q. Although in Q7 they say Hermes, in Q4  
5 they say Hermes.

6 A. Correct. But where -- where do they  
7 identify any goods put out by the plaintiff?

8 Q. Well, Q7 the question is: What other  
9 company, person or brand do you believe  
10 sponsors, authorizes or approves whoever makes  
11 or provides the items shown on the web page?

12 A. Yes.

13 Q. And so when the person answers Hermes  
14 there in respondent 108, that's not sufficient  
15 to be coded as confused?

16 A. No, for the -- for the reason that  
17 I've been explaining, because in these  
18 circumstances, like the original Eveready, it's  
19 not enough to just read back the senior user's  
20 name because that actually was affirmatively put  
21 in front of the respondent, right. It wasn't --  
22 because the junior user and the senior user are  
23 using the same name, you've essentially shown  
24 them the senior user's name, you -- not  
25 essentially you have, therefore, you -- you need

Page 110

1 additional evidence that comes in the form of Q4  
2 that the person is affirmatively thinking of  
3 Hermes. And the way you know that is that they  
4 mention at least some goods or services put out  
5 by the senior user. Person 108 has not done  
6 that.

7 Q. Is it your opinion that if a  
8 respondent used the term "MetaBirkins" that that  
9 shows no confusion?

10 A. Well, it's not -- it doesn't -- it's  
11 not a good -- MetaBirkin, as I understand it, is  
12 not a good put out by Hermes. You can correct  
13 me if I'm wrong about that, but that's my  
14 understanding.

15 Q. That, of course, is one of the  
16 questions in the case is whether people are  
17 confused when they see MetaBirkins.

18 So are you -- you give it -- if you  
19 recall, Dr. Isaacson scores MetaBirkins as not  
20 the same as someone answering Birkin, but he  
21 still gives them a code that counts towards some  
22 level of confusion, and you're saying that  
23 should be given absolutely no weight?

24 MR. MILLSAPS: Objection.

25 A. I think if someone just repeated

1 MetaBirkins and said nothing else related to  
2 Hermes, that would not be -- even setting aside  
3 this issue of the other products, that would not  
4 be sufficient evidence that the person was  
5 confused and thinking of Hermes.

6 Q. Have you seen any court require this  
7 follow-on question that you are describing in  
8 this section of your report?

9 A. Well, depends on what you mean by  
10 require. I -- I mean the original Eveready  
11 survey, which I think was -- I think the  
12 plaintiff lost that at the district level and  
13 then the circuit court, if memory serves,  
14 overturned that and affirmed the survey. So  
15 that obviously is -- is one.

16 I -- I am not aware, although I  
17 wouldn't be because I don't track these legal  
18 dimensions of things, I would not necessarily be  
19 aware of a court rejecting this one way or the  
20 other. You know, rejecting someone who failed  
21 to do this. I don't know that, but I haven't  
22 investigated that, I haven't researched that.

23 I know that whenever I encounter this  
24 issue, including with, you know, very prominent  
25 law firms who run a lot of surveys like this,